



**Office of the Attorney General
State of Texas**

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January 24, 1992

Mr. David J. Freeman
Executive Secretary
Texas Racing Commission
P. O. Box 12080
Austin, Texas 78711-2080

Letter Opinion No. 92-001

Re: Construction of the term
"revocation" for purposes of section
6.19, article 179e, V.T.C.S., and related
questions (RQ 188)

Dear Mr. Freeman:

You ask several questions about the application of section 6.19 of article 179e, V.T.C.S., the Texas Racing Act. Prior to 1991, racetrack licenses were subject to annual renewal. Two individuals had paid substantial racetrack application fees, but, at the time of license renewal, were unable to obtain the required financing. In 1991, the legislature attempted to assist these two investors in a manner that would permit them to reinstate their licenses without the necessity of beginning anew the entire application process. The result of that attempt was House Bill 2263, Acts 1991, 72d Leg., ch. 386, § 38, at 1458, which enacted section 6.19. That statute provides, in pertinent part:

(a) A class 2 racetrack license *revoked by the commission* before September 1, 1991, for the licensee's failure to demonstrate financial responsibility may be reinstated as provided by this section.

(b) A licensee to which this section applies must apply for reinstatement not later than January 1, 1992. The commission may not require the licensee to pay an application or renewal fee.

....

(d) The commission shall reinstate the license and may not revoke or suspend the license before the second anniversary of the date that it is reinstated unless it finds that:

(1) material grounds that cannot be cured, other than the licensee's inability to demonstrate financial responsibility, exist for denial, revocation, or suspension of the license;

....

(e) A license reinstated under this section expires on the second anniversary of the date that it is reinstated. (Emphasis added)

Section 6.19(a) permits reinstatement of a license that has been "revoked by the commission." You ask whether this expression encompasses a class 2 license 1) that was surrendered by the licensee prior to September 1, 1991, or 2) that expired because a) the licensee withdrew his renewal application or b) the Commission refused to renew his license before September 1, 1991.

The facts surrounding both the surrender of one license and the failure to renew the other indicate that the licensees had encountered problems in obtaining adequate financing. This was precisely the problem that section 6.19 was intended to alleviate. A "remedial act" is one which is "intended for the correction of defects, mistakes, and omissions in the civil institutions and administrative policy of the state." *Slate v. City of Fort Worth*, 193 S.W. 1143, 1144 (Tex.Civ.App.--El Paso 1917, no writ). Remedial acts should be liberally construed. *Burch v. City of San Antonio*, 518 S.W.2d 540, 544 (Tex. 1975). A remedial statute is to be accorded the most comprehensive and liberal construction of which it is susceptible. It should on no account be given a narrow, technical construction that would defeat the very purpose for which it was enacted. *City of Mason v. West Texas Utilities Co.*, 237 S.W.2d 273, 280 (Tex. 1951).

The purpose of the reinstatement provisions of section 6.19 is to ameliorate hardship in particular circumstances. For such purpose, there is no substantive difference between the situation of one whose license is affirmatively "revoked," and one who is within one of the other three scenarios described above. In each case, the hardship is the same. No useful function can be served by making a technical distinction among these various circumstances. Since section 6.19 is a remedial

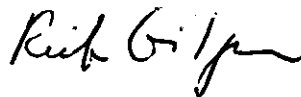
statute, we believe it should be construed to include within its ambit both that class of persons whose licenses were in fact revoked by the Commission and those whose licenses were *constructively revoked*, i.e., any person who, being unable to demonstrate financial responsibility, surrendered his license prior to September 1, 1991, or whose license expired because he withdrew his application for renewal, or whose license the Commission refused to renew.

As we have previously indicated, the situation you pose is limited to those two licensees who applied for reinstatement prior to January 1, 1992. Under the amended statute, a class 2 license has no requirement of periodic renewal: it is perpetual. Your second question is whether the Commission is authorized, prior to its reinstatement of one of these two licenses pursuant to section 6.19, to conduct a background investigation, under the terms of section 6.031, of new owners who might be brought in under new financing arrangements.

Section 6.031 by its terms applies only to new license applications or license renewals. It includes no reference to license *reinstatement*. Furthermore, because of the limited nature of the class to which this issue is applicable, the question will not recur. We conclude that, under section 6.19, no requirement of a background investigation of new owners may be imposed on these two entities.

Finally, you ask whether the Commission is authorized to adopt rules for the administration of section 6.19, so as to, for example, allow the Commission to adopt a deadline for filing applications for a "permanent" license. Section 3.02 of article 179e authorizes the Commission to "adopt other rules to administer this Act that are consistent with this Act." We believe it is clear that the Commission is empowered to promulgate rules for the implementation of section 6.19. You have not submitted, and consequently we do not address, the validity of a particular rule.

Very truly yours,



Rick Gilpin
Assistant Attorney General
Opinion Committee

RG/lcd

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cc: Race Track Services Unlimited
Texas Society of Assn. Execs.
Combined Law Enforcement Assn.
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